THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO.7573 of 2004

DATED: 01.08.2007

Between:-

Dr.J.Balachandrudu.

...

PETITIONER
AND

The Govt. of A.P. rep by its Principal Secretary, Health Medical & Family Welfare Dept., Secretariat, Hyderabad & others.

...

RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7573 of 2004

O R D E R

No counter affidavit is filed either by the Government or by the N.T.R. University of Health Sciences. Neither the learned Government Pleader for Education nor the Standing Counsel for the N.T.R. University of Health Sciences is present. In the absence of any counter affidavit being filed, and as the counsel appearing on behalf of the respondents are not even present when the matter was taken up for hearing, this Court has to go by the averments made in the affidavit filed in support of the writ petition and the submissions made by the counsel for the petitioner.

In the affidavit, filed in support of the writ petition, it is stated that the petitioner had completed his graduation in Medicine and had joined government Service as honorarium Medical Officer in 1987, that he was selected as Civil Assistant Surgeon in 1992 and, since 1987 onwards, he has been in continuous employment. Reference is made to the entrance examination held for Post Graduate Courses for the year 1999-2000 to submit that the petitioner was allotted M.D. (V.D.). Petitioner completed his Post Graduation in September, 2002. He was admitted in thepost graduate course of study on his being considered as an in-service candidate and was treated as the paid deputationtist. Petitioner would state that the University authorities had introduced M.D. (DVL) and DDVL courses from the academic year 2004-2005 and, claiming to be an in-service candidate under G.O.Ms.No.260 dated

10-07-1997, as amended by G.O.Ms.No.279 dated 09-07-2001, he sought admission into Post Graduation. According to the petitioner, he had appeared in the entrance examination held on 08-04-2004 for M.D. (DVL) and DDVL and had secured a fairly good rank and the main reason for his appearing in the M.D. (DVL) course was that the M.D. (V.D.) course was not recognized by the Medical Council of India. Petitioner's grievance is that his case was not considered for post graduate study in M.D. (DVL) as an in-service candidate in view of the amended rules in G.O.Ms.No.279 dated 09-07-2001 which stipulates that reservation for in-service candidate is only available once. It is his case that, as the degree obtained by him was not recognized by the Medical Council of India, he was constrained to make this request to enable him to acquire higher qualifications and that the degree obtained by him and the experience gained would be utilized by the State only.

Sri Tuhin Kumar, learned counsel appearing on behalf of the petitioner, would fairly submit that the action of the N.T.R.Univeristy of Health Sciences in granting Post Graduation Degrees separately for Dermatology, Venereology and Leprosy, instead of one course put together was the subject matter of challenge before this Court and that challenge was rejected both by the Single Judge and the Division Bench.

It is necessary to note that the rules, notified under G.O.Ms.No.260 dated 10-07-1997, as amended in G.O.Ms.No.279 dated 09-07-2001, are made under the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983), has a statutory force and there is a presumption of its constitutionality. These rules, made in exercise of the powers conferred under a statute,

necessitate strict adherence and its validity cannot be examined in the absence of a challenge made thereto.

Proviso to Rule 3(2), as inserted by G.O.Ms.No.279 dated 09-07-2001, and sub-rule (xii) of Rule 11 read thus:

Proviso to Rule 3(2)

"Provided that such of those in-service candidates who acquired Post Graduation Degree or Diploma either before entry into Government Service or after entry into Government Service shall not be considered for selection under in-service reservation quota of 15% in clinical subjects or 30% in non-clinical subjects as the case may be for another post graduation degree or post graduation diploma as the case may be."

Rule 11(xii)

"In case, if a service candidate who acquired Post Graduation diploma in a particular speciality either before entry into Government Service or after entry into Government Service and if he or she is selected for Post Graduate Degree in the same speciality, shall be allowed deputation for another period of twelve (12) months as he or she has drawn stipend for two (2) years while doing diploma in the speciality".

Under the Proviso to Rule 3(2), extracted above, candidates who had acquired a Post Graduation Degree or Diploma either before their entry into Government Service or after entry into Government Service are not to be considered for selection under the 15% quota in clinical subjects and 30% quota in non-clinical subjects as the case may be, earmarked in favour of in-service candidates.

Admittedly, the petitioner had completed his Post Graduate Degree in Venereology and Dermatology in September, 2002, having secured admission in the said course as an in-service candidate. Consequently, the amendment to the statutory rules in G.O.Ms.No.279 dated 09-07-2001, disentitles him from claiming admission as an in-service candidate. In the present case, the petitioner was not given admission as he had already obtained Post Graduation Degree earlier as an in-service candidate and as the statutory rules precluded the respondents from giving

admission to such candidates under the “in-service” category. Whatever may be the difficulty which the petitioner has, in so far as recognition of his Post graduate degree by the Medical Council of India is concerned, in the absence of a challenge to the statutory rules, it is not for this Court to examine its validity. The rules, as amended in G.O.Ms.No.279 dated 09-07-2001, disentitled persons who had already secured admission as in-service candidates from seeking admission again under the in-service quota. The Writ Petition, as filed seeking such admission, must necessarily fail and is accordingly dismissed.

Sri Tuhin Kumar, learned counsel appearing on behalf of the petitioner, would submit that pursuant to the interim order passed earlier the petitioner had, in fact, secured admission.

This Court, by order in W.P.M.P.No.9875 of 2004 dated 30-04-2004, had directed the respondents to consider the case of the petitioner as a general candidate and not as service candidate as per the merit.

It needs no reiteration that an interim order subsists only during the pendency of and is always subject to the final orders being passed in the writ petition. The mere fact that an interim order was passed earlier would not entitle the petitioner to claim, as a matter of right, that he should be permitted to continue and pursue his post graduate course where the statutory rules prohibit him from claiming such benefit.

The statutory rules in G.O.Ms.No.260 dated 10-07-1997, as amended in G.O.Ms.No.279 dated 09-07-2001, do not enable an in-service candidate from undergoing a second post graduate course. So long as the petitioner continues to be an “in-service candidate” he is not entitled to undergo a second post graduate course. The interim order passed by this Court earlier does not

entitle him to claim, as of right, that he be permitted to undergo the second post graduate course, even if he secured the seat on merit and not under the in-service quota.

The Writ Petition is dismissed. However, in the circumstances, without costs.

_____

01.08.2007

usd